

AMENDED IN SENATE MAY 2, 2006

SENATE BILL

No. 1697

Introduced by Senator Soto

February 24, 2006

An act to amend ~~Section 20391 of the Government Code, and to amend~~ Section 167 of, and to add Sections ~~328~~ 327.5, 328, and 395.5 to, the Military and Veterans Code, relating to military service, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1697, as amended, Soto. Military Service: benefits.

~~The Public Employees' Retirement Law defines "state peace officer/firefighter" in terms of employees employed by specified state departments in specified job classifications and provides higher retirement benefit formulas and higher employer and employee contribution rates for state peace officer/firefighter members than for state miscellaneous members.~~

~~This bill would add all persons in the Military Department on permanent active duty in the service of the state, who retire on or after January 1, 2007, within the state peace officer/firefighter membership category. To the extent the bill would enlarge the class of persons eligible for state safety or state peace officer/firefighter membership, it would make an appropriation by increasing the amount of contributions to the Public Employee's Retirement Fund.~~

Existing law provides that commissioned and warrant officers and enlisted personnel on active duty with the office of the Adjutant General are appointed by the Governor, with consideration of the recommendation of the Adjutant General and, except for certain officers and enlisted personnel, as specified, may remain on that duty

until age 60 years or until federal recognition of California National Guard grade or rank is withdrawn, whichever occurs later. Existing law specifies that these provisions for retention until age 60 years do not apply if the commission of an officer is vacated or if a warrant officer or enlisted person is discharged. Existing law permits a commissioned officer, as specified, to revert to the permanent grade held most recently upon vacating the general officer position.

This bill would provide that the Adjutant General shall convene a board every year to review the continuation of duty of personnel on permanent active duty, as specified, and according to certain standards and procedures, as specified, shall make a determination whether an individual is well qualified and should be granted a 2-year period prior to the next review. This bill would also provide that all persons shall be placed in the grade of O-7 or higher, as specified, with the advice and consent of the Senate, within one year of the enactment of this bill. Those persons who are not confirmed within one year shall be reduced to the grade of O-6.

Existing law provides that officers, warrant officers, and enlisted personnel, while on active duty in the service of the state, shall receive the same pay and allowances as officers, warrant officers, and enlisted personnel of similar grade in the United States Army, United States Air Force, and United States Navy, as specified.

This bill would provide that the amount of state pay for officers, warrant officers, and enlisted personnel who are on active duty in the service of the state, and who are also receiving a federal retirement payment, or are eligible to receive a federal retirement payment, shall be reduced by the amount of their federal retirement payment, or a percentage thereof, as specified.

Existing law provides certain benefits and protections for members of the state militia, as specified.

This bill would require the state Military Department to submit a report to the Legislature, as specified, on or before January 1, 2008, regarding those members of the department who would qualify as public safety personnel, thereby making them eligible to receive public safety retirement benefits.

This bill would require the Military Department to comply with the provisions of Section 4301 of Title 38 of the United States Code, the Uniformed Services Employment and Reemployment Rights Act (USERRA), and would provide that Military Department personnel, as specified, shall be considered employees and provided the same

federal reemployment protections and benefits given to other employees under USERRA.

Vote: majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Military Department State Active Duty Reform and
3 Modernization Act.

4 SEC. 2. The Legislature finds and declares all of the
5 following:

6 (a) The state Military Department serves essential public
7 safety purposes and routinely supports state and local authorities
8 in protecting the lives and property of the people of the state
9 during periods of natural disaster and civil disturbance, and
10 provides homeland security to the people of this state. Members
11 of the state Military Department are subject to being
12 involuntarily ordered to respond to emergencies and are required
13 to meet established standards of physical fitness.

14 (b) The Military Department is a unique agency whose
15 personnel may fall under federal oversight, applied by various
16 statutes and federal military regulations, and state disciplinary
17 jurisdiction under the California Military and Veterans Code.
18 However, certain members on state active duty, such as those
19 who have retired and lost federal recognition of their rank, are
20 not subject to federal oversight. Additionally, senior officers who
21 are otherwise subject to federal oversight may perform duties
22 solely related to state active duty and state Military Department
23 functions that do not fall within the purview of federal military
24 oversight.

25 SEC. 3. It is the intent of the Legislature to do ~~all~~ both of the
26 following:

27 (a) Ensure that Military Department personnel who are
28 employed on state active duty and are deployed, mobilized, or
29 otherwise subject to any federal active service under voluntary or
30 involuntary conditions, are provided the same federal
31 reemployment protections and benefits given to other state
32 employees of Section 4301 of Title 38 of the United States Code,

1 the Uniformed Services Employment and Reemployment Rights
2 Act.

3 (b) Bring senior officer qualifications and selection procedures
4 closer in line with that of the federal military and provide cost
5 reductions to the state.

6 ~~(e) Recognize the public safety nature of the Military~~
7 ~~Departments functions and to authorize a public safety retirement~~
8 ~~for persons on state active duty consistent with other public~~
9 ~~safety personnel.~~

10 SEC. 4. ~~Section 20391 of the Government Code is amended~~
11 ~~to read:~~

12 20391. “State peace officer/firefighter member” means:

13 (a) ~~All persons in the Board of Prison Terms, the Department~~
14 ~~of Consumer Affairs, the State Department of Developmental~~
15 ~~Services, the State Department of Health Services, the~~
16 ~~Department of Toxic Substances Control, the California Horse~~
17 ~~Racing Board, the Department of Industrial Relations, the~~
18 ~~Department of Insurance, the State Department of Mental Health,~~
19 ~~the Department of Motor Vehicles, the State Department of~~
20 ~~Social Services employed with the class title of Special~~
21 ~~Investigator (Class Code 8553), Senior Special Investigator~~
22 ~~(Class Code 8550), and Investigator Assistant (Class Code 8554)~~
23 ~~who have been designated as peace officers as defined in~~
24 ~~Sections 830.2 and 830.3 of the Penal Code.~~

25 (b) ~~All persons in the Department of Alcoholic Beverage~~
26 ~~Control employed with the class title Investigator Trainee,~~
27 ~~Alcoholic Beverage Control (Class Code 7553), Investigator I,~~
28 ~~Alcoholic Beverage Control, Range A and B (Class Code 7554),~~
29 ~~and Investigator II, Alcoholic Beverage Control (Class Code~~
30 ~~7555) who have been designated as peace officers as defined in~~
31 ~~Sections 830.2 and 830.3 of the Penal Code.~~

32 (c) ~~All persons within the Department of Justice who are state~~
33 ~~employees as defined in subdivision (c) of Section 3513 and who~~
34 ~~have been designated as peace officers and performing~~
35 ~~investigative duties.~~

36 (d) ~~All persons in the Department of Parks and Recreation~~
37 ~~employed with the class title of Park Ranger (Intermittent) (Class~~
38 ~~Code 0984) who have been designated as peace officers as~~
39 ~~defined in Sections 830.2 and 830.3 of the Penal Code.~~

1 ~~(e) All persons in the Franchise Tax Board who have been~~
2 ~~designated as peace officers in subdivision (s) of Section 830.3 of~~
3 ~~the Penal Code.~~

4 ~~(f) A member who is employed in a position that is~~
5 ~~reclassified to state peace officer/firefighter pursuant to this~~
6 ~~section may make an irrevocable election in writing to remain~~
7 ~~subject to the service retirement benefit and the normal rate of~~
8 ~~contribution applicable prior to reclassification by filing a notice~~
9 ~~of election with the board within 90 days of notification by the~~
10 ~~board. A member who so elects shall be subject to the reduced~~
11 ~~benefit factors specified in Section 21353 or 21354.1, as~~
12 ~~applicable, only for service included in the federal system.~~

13 ~~(g) All persons in the Military Department on permanent~~
14 ~~active duty in the service of the state, who retire on or after~~
15 ~~January 1, 2007.~~

16 ~~SEC. 5.~~

17 *SEC. 4.* Section 167 of the Military and Veterans Code is
18 amended to read:

19 167. (a) All commissioned and warrant officers and enlisted
20 personnel on permanent active duty with the Office of the
21 Adjutant General shall be appointed by the Governor, with
22 consideration of the recommendation of the Adjutant General
23 and, except for the Adjutant General, the Assistant Adjutant
24 General, and officers assigned to general officer positions, may
25 remain on active duty with the office either until age 60 or until
26 federal recognition of grade or rank as a member of the
27 California National Guard is withdrawn, whichever occurs later,
28 subject to subdivision (d).

29 (b) If the commission of an officer on active duty with the
30 office is vacated pursuant to Section 232, if a warrant officer on
31 active duty with the office is discharged pursuant to Section 225,
32 or if an enlisted person on active duty with the office is
33 discharged under proper authority, the provisions of subdivision
34 (a) regarding retention until age 60 do not apply.

35 (c) A commissioned officer on active duty with the office
36 assigned to a general officer position who, previous to that duty,
37 held a permanent active duty position in the office at a lower
38 grade may revert to the permanent grade last held upon vacation
39 of the general officer position.

(d) (1) On or after January 1, 2008, the Adjutant General shall convene a board every year to review the continuation of duty of personnel on permanent active duty who are not federally recognized members of the National Guard of the United States.

(2) The standards and procedures of the review shall be the same as those of continuation or retention boards for personnel who have reached 20 years of federal military service and are subject to annual or biennial review.

(3) After the review an individual may be granted a two-year period prior to the next review, if found to be well-qualified.

(e) (1) Upon enactment of this bill, all persons shall *only* be placed on permanent active duty in the grade of O-7 or higher with the advice and consent of the Senate.

(2) Upon enactment of this bill, all persons in the grade of O-7 or higher performing more than 120 days of state active duty within a fiscal year, except when such duty is performed pursuant to an emergency declared by the Governor, shall ~~only be placed~~ *remain on-permanent* state active duty with the advice and consent of the Senate.

(3) All persons on permanent active duty in the grade of O-7 or higher must be confirmed by the Senate within one year, or shall be reduced to the grade of O-6.

(4) No person shall be placed on permanent active duty unless they have previously completed at least one year of service in the California National Guard, the State Military Reserve, or the Naval Militia.

SEC. 5. Section 327.5 is added to the Military and Veterans Code, to read:

327.5. (a) On or before January 1, 2008, the state Military Department shall submit a report to the Legislature regarding the members in the state Military Department on permanent active duty in the service of the state, who the department would classify, due to the public safety nature of their service functions, as public safety personnel, thereby making them eligible to receive public safety retirement benefits consistent with other public safety personnel as defined in Section 20391 of the Government Code.

(b) The report shall include, but not be limited to, the following:

1 (1) *The positions that the state Military Department believes*
2 *should be classified as public safety positions, and the name and*
3 *permanent state rank of the members in those positions.*

4 (2) *The current number of members in the state Military*
5 *Department whose service while on permanent active duty is*
6 *directly related to public safety.*

7 (3) *The ages of those members described in paragraphs (1)*
8 *and (2).*

9 (4) *The amount to be paid in benefits upon the retirement of*
10 *members on permanent active duty, if those members were*
11 *reclassified as public safety personnel.*

12 (5) *Whether the state Military Department would benefit from*
13 *providing service credit, with regard to age and years of service,*
14 *to state Military Department members whose positions would not*
15 *be reclassified as public safety positions.*

16 (6) *The cost to the state Military Department of providing*
17 *service credit to those members whose positions would not be*
18 *reclassified as public safety positions.*

19 SEC. 6. Section 328 is added to the Military and Veterans
20 Code, to read:

21 328. (a) When determining the amount of state pay necessary
22 for officers, warrant officers, and enlisted personnel on active
23 duty in the service of the state, the concurrent receipt of federal
24 retirement pay for military service shall be considered, as
25 follows:

26 (1) When an individual has retired from federal active duty,
27 active Guard or Reserve duty, full-time National Guard duty, or
28 as a federal technician, his or her payment from the state for
29 active duty in the service of the state shall be reduced by an
30 amount equal to the federal retirement pay received during the
31 period of state active duty. The total amount of the reduced state
32 active duty pay and the federal retirement pay shall be equal to
33 the amount received by individuals of a similar grade in the
34 United States Army, United States Air Force, and United States
35 Navy.

36 (2) (A) When an individual on active duty in the service of
37 the state is eligible to receive retirement pay due to the
38 completion of 20 or more years of active federal service in
39 accordance with federal military regulations, but elects not to
40 apply for this retirement, the amount paid by the state for state

1 active duty service shall be reduced by 25 percent. The total
2 amount of the reduced state active duty pay and the federal
3 retirement pay shall be equal to the amount received by
4 individuals of a similar grade in the United States Army, United
5 States Air Force, and United States Navy.

6 (B) The intent of this provision is to offset the amount of
7 federal pay and allowances such individuals shall be eligible to
8 receive during the authorized 60 days of annual paid federal
9 military leave and 48 inactive duty training assemblies per
10 federal training year without imposing an undue administrative
11 burden on the Military Department to calculate the exact amounts
12 in these cases.

13 (b) This section shall take effect on the first day of the next
14 full pay period not less than 30 days after the enactment of this
15 bill.

16 (c) This section shall only apply to those individuals who
17 become active in state service on or after January 1, 2007.

18 SEC. 7. Section 395.5 is added to the Military and Veterans
19 Code, to read:

20 395.5. (a) The Military Department shall comply with the
21 provisions of Section 4301 of Title 38 of the United States Code,
22 the Uniformed Services Employment and Reemployment Rights
23 Act (USERRA).

24 (b) For purposes of USERRA, Military Department personnel
25 who are on state active duty and are deployed, mobilized, or
26 otherwise subject to any federal active service under voluntary or
27 involuntary conditions, shall be considered employees and
28 provided the same federal reemployment protections and benefits
29 given to other employees under USERRA.

30 (c) The State Personnel Board shall have jurisdiction and
31 responsibility for appeals regarding complaints by Military
32 Department personnel who allege violations of USERRA by the
33 Military Department.